Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

October Term, 1997

ZACHARY TAYLOR, as Executor of the Estate of Jack T. Taylor, Jr., Deceased and THE TAYLOR FAMILY PARTNERSHIP,

Petitioners,

vs.

CHARLIE JAQUEZ, JR.; PETE E. ESPINOZA; ELMER MANUEL ESPINOZA; JOE A. GALLEGOS and ROBERT ROMERO; Individually and as Representatives of a Proposed Class of Some 110 Plaintiffs in Civil Action No. 81CV5 now pending in the District Court of Costilla County, Colorado,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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60 pp

QUESTION PRESENTED

Whether the *Younger* abstention doctrine bars a federal court from enjoining state court relitigation of issues decided in a 32-year old federal court decree entered in a civil suit involving private claims to privately-owned land?

PARTIES TO THE PROCEEDING

The parties to this petition are named in the caption. Note, however, that the Respondents are named individually and as representatives of a class of plaintiffs in a pending Colorado state trial court action. Because of the disposition by the district court below on motion, the instant case had not proceeded to class certification.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Citations	iv
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provision Involved	1
Statement of the Case	2
A. Litigation History	2
B. The Proceedings Below	4
Reasons for Granting the Writ	5
I. The Decision Below Involves Important Issues Of Federal Law Concerning The Application Of The Relitigation Exception To The Anti-injunction Act That Are Necessary To Prevent State Court Relitigation Of Federal Court Judgments And Decrees.	5
II. The Decision Below Conflicts With Recent Decisions Of Other Circuits With Respect To The	

Contents

Page

Application Of The Relitigation Exception And *Younger* Abstention To Civil Cases Between Private Parties. 7

III. The Unprecedented Extension Below Of *Younger* Abstention Beyond The Boundaries Previously Set By This Court Present Important Issues Affecting The Vitality Of Federal Court Judgments And Decrees. 10

Conclusion 12

TABLE OF CITATIONS

Cases Cited:

Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 108 S. Ct. 1684, 100 L. Ed. 2d 127 (1988) 5, 6

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976) 6

Daewoo Electronics Corp. of America, Inc. v. Western Auto Supply Co., 975 F.2d 474 (8th Cir. 1992) 7, 8

Erie R. Co. v. Thompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 2d 1188 (1938) 11

First Alabama Bank of Montgomery, N.A. v. Parsons Steel, Inc., 825 F.2d 1475 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060, 108 S. Ct. 1015, 98 L. Ed. 2d 980 (1988) 7, 8, 9

Contents

	Page
In re SDDS, Inc., 97 F.3d 1030 (8th Cir. 1996)	7, 9
New Orleans Public Service, Inc. v. New Orleans, 491 U.S. 350, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989)	6
Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518 (1986)	4
Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987)	6, 8, 10, 12
Rael v. Taylor, 876 P.2d 1210 (Colo. 1994)	3, 4
Rael v. Taylor, 832 P.2d 1011 (Colo. App. 1992)	4
Sanchez v. Taylor, 377 F.2d 733 (10th Cir. 1967)	2, 3, 4, 5, 10, 12
Taylor v. Jaquez, 126 F.3d 1294 (10th Cir. 1997)	1, 2, 3, 4, 5, 10, 12
Taylor v. Jaquez, Civ. No. 96-Z-776 (D. Colo. August 22, 1996)	1, 2, 11
Taylor v. Sandoval, 442 F. Supp. 491 (D. Colo. 1977)	2
Western Systems, Inc. v. Ulloa, 958 F.2d 864 (9th Cir. 1992), *cert. denied*, 506 U.S. 1050, 113 S. Ct. 970, 122 L. Ed. 2d 125 (1993)	7

Contents

Page

Younger v. Harris, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971) ..... i, 1, 4, 5, 6, 7, 8, 9, 10, 11, 12

Statutes Cited:

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1332(a)(1) 3

28 U.S.C. § 2283 ..... 1, 2, 4, 5

United States Constitution Cited:

Eleventh Amendment 9

Rules Cited:

Fed. R. Civ. P. 12(b)(6) 4

Fed. R. Civ. P. 56(c) 4

APPENDIX

Appendix A — Opinion Of The United States Court Of Appeals For The Tenth Circuit Filed October 10, 1997 ..... 1a

Appendix B — Excerpted Hearing On Motion To Dismiss Of The United States District Court For The District Of Colorado Dated August 22, 1996 ..... 9a

Appendix C — Final Decree Of Confirmation Of Title And Registration Filed October 5, 1965 ..... 15a

Petitioners, Zachary Taylor, as Executor of the Estate of Jack T. Taylor, Jr., Deceased; and The Taylor Family Partnership (collectively, the Taylor Family), by counsel, respectfully request that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this case on October 10, 1997. Certiorari is necessary to reconcile important issues involving the relitigation exception to the Anti-Injunction Act with this Court's *Younger* doctrine and, further, to resolve conflicts between the decision below and recent decisions of the Eighth, Ninth and Eleventh Circuit Courts of Appeal on those important issues.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at *Taylor v. Jaquez*, 126 F.3d 1294 (10th Cir. 1997). The slip opinion is reprinted in the attached appendix (App.). App. at 1a-8a. The ruling of the district court below in *Taylor v. Jaquez*, Civ. No. 96-Z-776 (D. Colo. August 22, 1996) is not published, but is appended. App. at 9a-14a.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit (Court of Appeals) was entered on October 10, 1997.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

28 U.S.C. § 2283. **Stay of State Court Proceedings**

> A court of the United States may not grant an injunction to stay proceedings in a State court except

as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

This is the third federal court case involving efforts of the Taylor Family interests to protect their ranch property (the Taylor Ranch) against adverse claims. Their first case (*Taylor I*) resulted in a 1965 federal court decree quieting and registering title to the Taylor Ranch in the Taylor Family decedent, Jack T. Taylor, Jr. In its decree the trial court rejected usufructuary claims to the ranch by nearly 400 area residents. App. at 15a-40a. That decree was affirmed in *Sanchez v. Taylor*, 377 F.2d 733 (10th Cir. 1967).

In *Taylor II* the federal court judgment established that the roads on the Taylor Ranch were not public roads despite claims to the contrary by the local county commissioners. *Taylor II* also resulted in permanent injunctions against and an award of punitive damages against the county commissioners who were found guilty of interfering with Taylor efforts to protect the roads on the Taylor Ranch from trespassers. *Taylor v. Sandoval*, 442 F. Supp. 491 (D. Colo. 1977).

The instant action (*Taylor III*) is the effort of the Taylor Family to protect the federal court decree in *Taylor I* against relitigation by Colorado state courts under the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283. Jurisdiction is not contested.

A. Litigation History

In 1960, Jack T. Taylor, Jr., a North Carolina resident, purchased the subject ranch situate in southern Colorado. Later

that year Mr. Taylor commenced an action in the United States District Court for the District of Colorado to register and quiet title to his ranch (*Taylor I*). Jurisdiction was based upon diversity, 28 U.S.C. § 1332(a)(1).

In 1965, the *Taylor I* district court entered its Final Decree of Confirmation of Title and Registration. App. at 15a-40a. The court ruled that title to the Taylor Ranch was vested in Mr. Taylor ". . . free and clear of any and all liens, encumbrances, interests, claims and estates of all persons, known or unknown . . ." [with exceptions not material here]. App. at 17a.

In its *Taylor I* final decree the district court also held that it had jurisdiction over the parties and the subject matter and that ". . . the statutory requirements of service, publication and notice have been met and fulfilled." App. at 16a. Those statutory requirements for service and notice involved detailed procedures for the identification and service of process upon interested parties, including the investigation, participation and reporting of a court-appointed independent title examiner. App. at 16a. Those procedures are outlined in *Rael v. Taylor*, 876 P.2d 1210, 1230-31 (Colo. 1994) (dissenting opinion).

More than 15 years after entry of the decree in *Taylor I*, some 110 plaintiffs, individually and as representatives of a purported class,[1] commenced an action in the Colorado state court (the state court action) seeking to quiet title to the same alleged rights upon the identical grounds that were fully litigated and rejected in *Taylor I*. The state trial court summarily dismissed their action on res judicata and statute of limitations grounds.

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1. Those plaintiffs included many individuals who were defendants personally served and represented by counsel in *Taylor I* and others who identified themselves as "heirs or successors in interest of the original settlors of the Sangre de Cristo Grant." They asserted identical claims as those rejected in *Taylor I*. Class certification has been denied by the state court.

The Colorado Court of Appeals affirmed. *Rael v. Taylor*, 832 P.2d 1011 (Colo. App. 1992). Certiorari was granted by the Colorado Supreme Court. That court, in a 4-3 decision, reversed and ordered the case remanded for a determination of whether service and notice was adequate in *Taylor I*, notwithstanding the federal court ruling in *Taylor I* that "the statutory requirements of service, publication and notice had been met and fulfilled." App. at 16a. *Rael v. Taylor*, 876 P.2d 1210, 1229 (Colo. 1994).

B. The Proceedings Below

Mr. Taylor's estate and a family partnership commenced their instant suit, *Taylor III*, in the district court under the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283 to enforce the 1965 *Taylor I* decree and to enjoin Respondents and their state court plaintiff class from proceeding with the state court action, *i.e.* relitigating the issues determined in *Taylor I*.[2]

The Respondents moved to dismiss the Taylor Family complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6). The district court converted that motion to a motion for summary judgment under Fed. R. Civ. P. 56(c) because matters outside of the pleadings had been presented. The district court ruled that it was required to abstain under *Younger v. Harris*, 401 U.S. 37 (1971) and by application of *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518 (1986). App. at 13a-14a.

The Tenth Circuit Court of Appeals affirmed solely on the basis of *Younger* abstention. App. at 8a. *Taylor v. Jaquez*, 126 F.3d 1294, 1298 (10th Cir. 1997).

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2. Presently, the state trial court is proceeding with that action. *See* n.3, *infra*.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW INVOLVES IMPORTANT ISSUES OF FEDERAL LAW CONCERNING THE APPLICATION OF THE RELITIGATION EXCEPTION TO THE ANTI-INJUNCTION ACT THAT ARE NECESSARY TO PREVENT STATE COURT RELITIGATION OF FEDERAL COURT JUDGMENTS AND DECREES.

By requiring abstention under *Younger v. Harris*, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971) (*Younger*) the courts below have permitted the state court to reconsider the federal court *Taylor I* conclusion that "[T]he statutory requirements of service, publication and notice have been met and fulfilled" and threatens the retrial of all issues decided by the 32-year old *Taylor I* decree.[3]

The propriety of the decision below rests upon a consideration of whether purported state interests are paramount to the rights of federal courts to protect and effectuate their own judgments and decrees against state court challenges.

The relitigation exception to the Anti-Injunction Act allows federal courts to enjoin state court actions "to protect or effectuate [federal court] judgments." 28 U.S.C. § 2283: *Chick*

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3. That threat is not idle. Presently, the state trial court has already overruled *Taylor I* by ruling that service and notice were insufficient with respect to three original members of Respondents' class. One of those purported state court plaintiffs was only 12 years old when *Taylor I* was commenced; another was not an area resident, and the third was, in fact, a defendant who was personally served and represented by counsel in *Taylor I*. The state court action is now slated for trial on the merits with respect to the claims of the remaining plaintiffs.

Kam Choo v. Exxon Corp., 486 U.S. 140, 143-44, 108 S. Ct. 1684, 1687-88, 100 L. Ed. 2d 127, 133-34 (1988). The result below would virtually emasculate the authority of federal courts to protect their judgments and decrees against state court reconsideration. Any federal court judgment or decree, particularly in a diversity action, would be vulnerable to state court reconsideration of "whether state law was properly followed." App. at 7a. That is exactly the situation at bar.

In the years following *Younger*, this Court has required federal court abstention from state court criminal and quasi-criminal proceedings, but has extended the *Younger* doctrine to civil cases in only limited circumstances. In civil actions involving private claims between private parties, *Younger* abstention has been applied by this Court only to require abstention from "civil enforcement" proceedings. *New Orleans Public Service, Inc. v. New Orleans*, 491 U.S. 350, 367-68, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987) (*Pennzoil*). There is no Colorado state judgment or other proceeding to be enforced in this case.

The decision below extends *Younger* to a civil matter between private parties concerning private claims — clearly beyond the limits previously established by this Court. The Tenth Circuit opinion below makes no attempt to consider the effect of the relitigation exception on *Younger* abstention considerations. The decision below appears to overlook the importance of the relitigation exception and the general proposition that federal court abstention is the exception, not the rule. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976). Instead, the decision below effectively renders federal court jurisdiction virtually meaningless by subjecting judgments and decrees in diversity cases (and in other cases in which state

laws are applied) to review and retrial in state courts — a result not justifiable under any prior decision of this Court or under the guiding principles of equity, comity, federalism, justice or reason.

Granting a writ of certiorari to clarify the uncertainty in the law that appears to have prompted the decision below is essential to prevent a flood of diversity and other litigants from filing state court actions challenging adverse, unfavorable or unpopular federal court judgments and decrees on the grounds that federal court judges had allegedly misinterpreted or misapplied state law. App. at 7a.

II.

THE DECISION BELOW CONFLICTS WITH RECENT DECISIONS OF OTHER CIRCUITS WITH RESPECT TO THE APPLICATION OF THE RELITIGATION EXCEPTION AND *YOUNGER* ABSTENTION TO CIVIL CASES BETWEEN PRIVATE PARTIES.

The decision below is in conflict with recent decisions of the Eighth, Ninth and Eleventh Circuits concerning the application of *Younger* abstention. Those decisions include *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996); *Western Systems, Inc. v. Ulloa*, 958 F.2d 864 (9th Cir. 1992), *cert. denied*, 506 U.S. 1050, 113 S. Ct. 970, 122 L. Ed. 2d 125 (1993); *Daewoo Electronics Corp. of America, Inc. v. Western Auto Supply Co.*, 975 F.2d 474 (8th Cir. 1992) and *First Alabama Bank of Montgomery, N.A. v. Parsons Steel, Inc.*, 825 F.2d 1475 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060, 108 S. Ct. 1015, 98 L. Ed. 2d 980 (1988).

Each of the above-cited cases rejected *Younger* abstention and permitted injunctions against state court proceedings under

the relitigation exception to the Anti-Injunction Act. In conflict with the decision below, the Eighth Circuit in *Daewoo*, a diversity case, concluded:

> The injunction in this case does not threaten the authority of the New Jersey judiciary or state law. Neither does the injunction challenge the processes by which New Jersey compels compliance with the judgments of its courts. New Jersey has no interest in the action enjoined by the district court beyond that of adjudicating a wholly private dispute. Accordingly, considerations of comity do not require the district court to apply the *Goodrich* [abstention in a case involving attorney discipline] here. *See, Pennzoil v. Texaco, Inc.* [citation omitted]; *Airlines Reporting Corp. v. Barry*, 825 F.2d 1220, 1225 (8th Cir. 1987). Rather than interfere with New Jersey's interests, the injunction will promote judicial economy and protection of parties from harassing, duplicative litigation, interests which the federal and state courts share.

Daewoo Electronics Corp. of America, Inc. v. Western Auto Supply Co., *supra* at 478-79. Similarly, the Eleventh Circuit, in *First Alabama Bank*, reviewed this Court's *Younger* rulings and concluded that *Younger* was inapplicable because the state involved was not a party to the action ". . . nor was that action brought to vindicate important interests of that State." Instead, the court, relying on *Pennzoil*, concluded:

> The state court action involved in this case was merely a private action between private parties in which the State of Alabama had no interest beyond "its interest as adjudicator of wholly private disputes."

First Alabama Bank of Montgomery, N.A. v. Parsons Steel, Inc., *supra* at 1483. This Court denied certiorari.

In the Eighth Circuit *SDDS* case, the state was a party and arguably important state interests (the construction and maintenance of a solid waste disposal facility) were involved. The circuit court reversed the trial court denial of an injunction against the state court proceedings and remanded the case. That court ordered the district court to enjoin relitigation of issues previously decided by the federal court. Responding to the state's Eleventh Amendment immunity argument, the court cautioned against allowing

> . . . these Defendants, and all future state defendants, to effectively ignore judgments rendered in the federal courts, generating needless relitigation in state courts, and rendering our judgments largely nugatory.

In re SDDS, Inc., *supra* at 1035.

The three circuit cases discussed above are in conflict with the decision below and stand for the sound proposition that *Younger* abstention is inapplicable to cases falling within the relitigation exception to the Anti-Injunction Act.

The conflict between the decision below and those of other circuits warrants consideration by this Court of the important federal-state relitigation-abstention issues involved. Certiorari should be granted in this case to resolve both the conflicts between the circuits and to reconcile relitigation exception and *Younger* abstention principles.

III.

THE UNPRECEDENTED EXTENSION BELOW OF *YOUNGER* ABSTENTION BEYOND THE BOUNDARIES PREVIOUSLY SET BY THIS COURT PRESENT IMPORTANT ISSUES AFFECTING THE VITALITY OF FEDERAL COURT JUDGMENTS AND DECREES.

As noted earlier, this Court has extended the application of *Younger* in civil cases only to those characterized as quasi-criminal or civil enforcement proceedings. The case at bar involves neither. In *Pennzoil* five members of the Court agreed that *Younger* abstention was appropriate because of the important state interest in the enforcement of a Texas state court judgment. Four Justices concurred in the result, but not in the application of *Younger* abstention.

This Court's conclusions in *Pennzoil* begs the question: Should federal courts give greater deference to state court proceedings seeking to relitigate issues decided in earlier federal court judgments than the enforcement of the earlier federal judgments themselves? *Pennzoil* abstained from interfering with the state court judgment, but the decision below approves state court interference with the federal court decree in *Taylor I* — a result diametrically opposite from *Pennzoil*.

There is no principle of comity, federalism or equity that would or should make federal court judgments and decrees vulnerable to state court challenges comparable to the present threat to the *Taylor I* decree. The congressional adoption of a specific exception to its Anti-Injunction Act that allows federal courts to enjoin state court proceedings establishes public policy favoring injunctive relief against state court relitigation of federal court judgments and decrees.

Younger and its progeny do not prohibit injunctive relief permitted under the relitigation exception. The case at bar presents a timely opportunity for the Court to clarify *Younger* in light of the relitigation exception and to confirm that litigants and others may rely upon the finality of federal court judgments and decrees.

The rulings below characterizing Respondents' private claims as involving matters of "important state interests" are likewise unprecedented. Under *Erie R. Co. v. Thompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 2d 1188 (1938), federal courts routinely decide issues of state law. Federal court applications of state law are not reviewable by state courts. However, the decisions below allow such review and even retrial at the mere suggestion that "important state interests" may be involved.

The state interests suggested in this case involve interests no different than those commonly present in most diversity and other federal court cases in which state law is applied. The state interest identified by the circuit below is "whether state law was properly followed". App. at 7a. The district court below added ". . . access to courts for state citizens, the interpretation of the notice provisions of the Colorado Torrens Act, the state's interest in access to lands and citizen's access to state lands."[4] App. at 12a. Comparable issues would necessarily be involved in almost every diversity case concerning private land disputes. Unless this Court is prepared to allow state court challenges and relitigation of all diversity cases involving private land claims, the "important state interest" characterization below requires re-examination on certiorari review.

We submit that the result below was not intended by Congress in the Anti-Injunction Act or contemplated by this

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4. No state-owned land is involved in this case.

Court in *Younger*. In fact, this Court's respect for the enforceability of the state judgments in *Pennzoil* demands the same respect for the *Taylor I* decree and certiorari review is necessary to correct the misunderstandings and errors below.

CONCLUSION

This case presents issues of exceptional importance — the relationships between federal and state courts and the need for a reconciliation of the relitigation exception to the Anti-Injunction Act with the Court's *Younger* abstention doctrine. A grant of certiorari in this case is necessary to "protect and effectuate" federal court judgments and decrees against state court relitigation.

Accordingly, the Taylor Family respectfully requests that their Petition for Certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT FILED OCTOBER 10, 1997

PUBLISH

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 96-1426

ZACHARY TAYLOR, as Executor of the Estate of Jack T. Taylor, Jr., deceased; TAYLOR FAMILY PARTNERSHIP,

Plaintiffs-Appellants,

v.

CHARLIE JAQUEZ, JR.; PETE E. ESPINOZA, ELMER MANUEL ESPINOZA, JOE A. GALLEGOS, ROBERT ROMERO, Individually and as representatives of a proposed class of some 110 plaintiffs in civil action No. 81CV5 now pending in the District Court of Costilla County, Colorado,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
(D.C. No. 96-Z-776)

Albert B. Wolf, Wolf & Slatkin, P.C., Denver, CO, for Plaintiffs-Appellants.

Jerry P. Gordon, Esq. (Jeffrey A. Goldstein, Esq., Denver, CO, and Watson W. Galleher, Esq., Don, Hiller & Galleher, PC,

Denver, CO, with him on the briefs), Boulder, CO, for Defendants-Appellees.

Before **PORFILIO**, **ANDERSON**, and **BALDOCK**, Circuit Judges.

PORFILIO, Circuit Judge.

This appeal presents the question of whether the United States District Court of the District of Colorado properly abstained from enforcing a judgment entered in a federal quiet title action because of pending state court litigation over the rights of individuals challenging appellants' interest in the land. We conclude these circumstances require abstention by federal courts and affirm the judgment of dismissal.

I. BACKGROUND

In the beginning, the 77,524 acre Taylor Ranch was part of an 1844 grant of a million acres of land bestowed by the Mexican governor of New Mexico upon Narcisco Beaubien and Stephen Luis Lee.[1] After the grantees' deaths, much of the land in the Sangre de Cristo Grant, particularly parcels in an area designated the Rito Seco, were conveyed, although the land at issue here, "La Sierra," the Mountain Tract, was not sold until 1960 when Jack Taylor, a resident of North Carolina, purchased it. Located southwest of the town of San Luis in Costilla County, Colorado, the tract contains the only privately owned 14,000 foot mountain in the state. Mr. Taylor's deed to La Sierra recognized all existing rights-of-way and was "also subject to claims of the local people by prescription or otherwise to right to pasture, wood, and

1. A more comprehensive history is detailed in ***Rael v. Taylor***, 876 P.2d 1210 (Colo. 1994).

lumber and so-called settlements [sic] rights in, to and upon said land, but not subject to rights granted by the party of the first part or its predecessors from and after January 1, 1900. . . ." ***Rael v. Taylor***, 876 P.2d 1210, 1214 (Colo. 1994) ***(Rael)***. The representation and substance of the "claims of the local people" dating back to the original grant impel the litigation presently pending in the state district court of Costilla County albeit the federal court's order quieting title granted to Jack Taylor in his 1960 Torrens Title Registration diversity action. ***Sanchez v. Taylor***, 377 F.2d 733 (10th Cir. 1967) ***(TaylorI)***.

To preserve that judgment, Zachary Taylor, as Executor of the Estate of Jack C. Taylor, and the Taylor Family Partnership (Taylor, collectively) filed the present action, ***Taylor II***, under 28 U.S.C. § 2283 in the United States District Court for the district of Colorado to enjoin the 110 plaintiffs in the Costilla County lawsuit from attacking the validity of the Final Decree of Confirmation of Title and Registration entered in 1965 (the Decree). The Decree had become imperiled by a 1994 Colorado Supreme Court decision which construed the notice requirements of the Colorado Torrens Title Act and concluded, as a matter of state law, the 1960 federal action may not have provided constitutionally adequate publication notice sufficient to constitute a binding judgment on those not served. The Colorado Supreme Court thus reversed a state court order dismissing the case on res judicata grounds and remanded for resolution of the factual issues surrounding plaintiffs' due process claims. ***Rael***, 876 P.2d at 1227. Taylor did not seek further review of that decision, and it now stands as the law of the case.

As such, defendants here, as individuals and class representatives of "some 110 Plaintiffs in Civil Action No. 81CV5 now pending in the District Court of Costilla County,

Colorado," moved to dismiss ***Taylor II*** under Fed. R. Civ. P. 12(b)(6) on the grounds that *Younger* abstention, ***Younger v. Harris***, 401 U.S. 37 (1971), application of the principles of ***Parsons Steel, Inc. v. First Alabama Bank***, 474 U.S. 518 (1986), and the sound policies underlying the Anti-Injunction Act compel a federal court to avoid interfering with pending state proceedings.

At the close of a hearing, the district court ruled from the bench after converting the motion to dismiss into one for summary judgment under Fed. R. Civ. P. 56(c) because matters outside the pleadings had been presented. The court agreed two of the requisites for *Younger* abstention were present, the parties having conceded there are ongoing state proceedings and Taylor has an opportunity to raise his federal claims in that forum. It further concluded, as a matter of law, important state interests involving the access to the courts for state citizens, the interpretation of the notification provisions of the Colorado Torrens Act, the state's interest in access to lands, and citizens' access to state lands precluded it from adjudicating the claim before it. In addition, the court held ***Rael*** explicitly determined the preclusive effect of the state judgment, and on that basis, the principles of federalism and comity articulated in *Parsons Steel, Inc.* demanded noninterference. Summary judgment of dismissal was entered, and Taylor appealed.

II. STANDARD OF REVIEW

Although what the district court did amounts to denying a preliminary injunction, an order we review for abuse of discretion, ***Lundgrin v. Claytor***, 619 F.2d 61, 63 (10th Cir. 1980), more precisely, we have before us a motion for dismissal under Fed. R. Civ. P. 56(c) which is predicated on *Younger* abstention.

We have not previously addressed the applicable standard of review[2] although other circuits have and provide guidance. Recognizing the elusiveness of the standard often applied to review *Younger* abstention, the Seventh Circuit observed because "application of the *Younger* doctrine is absolute . . .when a case meets the *Younger* criteria," there is no discretion for the district court to exercise. ***Trust & Inv. Advisers, Inc v. Hogsett***, 43 F.3d 290, 294 (7th Cir. 1994). Review, therefore, of the decision to abstain is *de nova*, the Seventh Circuit held. We agree. Although positioned on the tip of Rule 56(c) which also merits plenary review, that examination is sharpened by the legal determination of whether the requisites of *Younger* abstention have been satisfied. *See also* ***Brooks v. New Hampshire Supreme Court***, 80 F.3d 633, 637 (1st Cir. 1996); ***Kenneally v. Lungren***, 967 F.2d 329, 331 (9th Cir. 1992), *cert. denied*, 506 U.S. 1054 (1993); ***Traughber v. Beauchane***, 760 F.2d 673, 675-76 (6th Cir. 1985). To insure they have, we must be sensitive to the competing tension between protecting federal jurisdiction and honoring principles of Our Federalism and comity. Our review therefore is *de novo*.

III. *YOUNGER* ABSTENTION

"Since the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." **Younger v. Harris**, 401 U.S. 37, 43 (1971). To assure this end,

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2. In ***Ramos v. Lamm***, 639 F.2d 559, 564 n.4 (10th Cir. 1980), the court described the decision to abstain as "largely committed to the discretion of the district court," in concluding "there was no error or abuse of discretion by the district court in declining to abstain from hearing this constitutional case . . . ." ***Id.*** at 565. We thus affirmed the exercise of jurisdiction based on the final judgment for injunctive relief the district court had entered under Fed. R. Civ. P. 54(b).

Younger articulated a narrow exception now applied to state criminal, ***Younger***, 401 U.S. at 37; civil, ***New Orleans Public Serv., Inc. v. Council of City of New Orleans***, 491 U.S. 350 (1989); or administrative proceedings, ***Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.***, 477 U.S. 619 (1986), which commands a federal court to abstain from exercising jurisdiction when three conditions have been established. First, there must be ongoing state criminal, civil, or administrative proceedings. Second, the state court must offer an adequate forum to hear the federal plaintiff's claims from the federal lawsuit. Third, the state proceeding must involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies. ***Seneca-Cayuga Tribe of Oklahoma v. State of Oklahoma ex rel. Thompson***, 874 F.2d 709, 711 (10th Cir. 1989). In this case, the parties agree the first two requisites are present. However, the absence of the third element of an important state interest presented, Taylor contends, requires the district court to exercise jurisdiction and grant injunctive relief.

Taylor portrays the state proceeding as one involving "only claims of private individuals to engage in activities upon the privately-owned land of the Taylor Family." Based on this characterization, Taylor urges state citizens' access to the courts, resolution of property claims, and access to land are not cognizable for *Younger* abstention and would render meaningless the relitigation exception to the Anti-Injunction Act. 28 U.S.C. § 2283. Instead, Taylor maintains, we should enforce the thirty-two year old judgment quieting title based on application of ***Mullane v. Central Hanover Bank & Trust Co.***, 339 U.S. 306 (1950), which ascertained that constitutionally sufficient notice was afforded all interested parties.

Nonetheless, it is critical to recognize the prior federal action was premised on diversity jurisdiction in which Jack Taylor, a resident of North Carolina, notified citizens residing around his property in southern Colorado of his intention to register his title to the 77,524 acre tract in compliance with the statutory scheme set out in Colorado's Torrens Title Registration Act, now codified at Colo. Rev. Stat. §§ 38-36-101 through 38-36-198 (1982 & 1993 Supp.). The federal court applied state law in that action and principally focussed on whether the alleged prescriptive rights of defendants vested any legal rights in them adverse to establishing Taylor's clear title. In that decision, the court made only passing reference to the question of notice, indicating the number of residents served and the defendants against whom default judgments were entered for failure to respond to interrogatories. ***TaylorI***, 377 F.2d at 734. However, since that decision, the Colorado Supreme Court has comprehensively addressed the Torrens Act's notice requirements and ordered the state trial court to apply its announced prescription in proceedings the Supreme Court held were improperly dismissed. ***Rael***, 876 P.2d at 1210. As the federal district court noted here, what more important state interest is there for the state court to address than the enforcement of its method of registering good title to privately owned lands within the state. That individual citizens may raise these issues does not transform the state interest into a private one. As the Court observed in ***Pennzoil Co. v. Texaco, Inc.***, 481 U.S. 1, 13 (1987), "the importance to the States of enforcing the orders and judgments of their courts" represents an important state interest in administering certain aspects of their judicial systems. Under these circumstances, to ignore the pronouncement of the Colorado Supreme Court by enjoining the very proceeding it reinstated to determine whether state law was properly followed would intolerably interfere with the judgments of state courts.

Moreover, contrary to Taylor's suggestion, the state court is surely competent to decide whether the notice requirements of the Torrens Act were satisfied as to those plaintiffs presently challenging the prior action. Indeed, ***Rael*** demands the federal plaintiffs receive a full and fair opportunity to litigate the constitutional claim of due process.

III. CONCLUSION

Our conclusion that *Younger* abstention applies ends the matter. It was unnecessary for the district court to couch dismissal on the additional ground of the preclusive effect of the state court judgment. When equitable restraint is warranted, we defer to the state proceeding. We therefore **AFFIRM** the order dismissing the action based on *Younger* abstention.

APPENDIX B — EXCERPTED HEARING ON MOTION TO DISMISS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO DATED AUGUST 22, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 96-Z-776

ZACHARY TAYLOR, *et al.*,

Plaintiffs,

vs.

CHARLIE JAQUEZ, JR., *et al.*,

Defendants.

REPORTER'S TRANSCRIPT
(Hearing on Motion to Dismiss)

Proceedings before the HONORABLE ZITA L. WEINSHIENK, Judge, United States District Court for the District of Colorado, commencing at 8:50 a.m., on the 22d day of August, 196, in Courtroom C-400, United States Courthouse, Denver, Colorado.

APPEARANCES

ALBERT B. WOLF and RAYMOND P. MICKLEWRIGHT, Attorneys at Law, 745 Ptarmigan Place, 3773 Cherry Creek North Drive, Denver, Colorado, 80209, appearing for tile plaintiffs.

Appendix B

WILLIAM F. SCHOEBERLEIN, Attorney at Law, 950 17th Street, Suite 1600, Denver, Colorado, 80202, appearing for the defendants.

* * *

[33] We'd ask the Court to issue an order which will dismiss this action, allow the action in the county of Costilla to proceed. And we believe that it's probably appropriate to issue that order pursuant both to Rule 12 and to Rule 56.

Thank you very much, your Honor.

THE COURT: If the Court had indicated this as a motion for summary judgment under 56, would there have been anything else that would have been presented I think we've had and considered many attachments on both sides.

MR. WOLF: The only matter is if the Court would have a question with respect to irreparable damage or irreparable harm, we would submit some more information to the Court, if the Court were to make an adverse determination based upon that issue.

THE COURT: Yes. If we get to the preliminary injunction issue, then certainly that must be shown.

MR. WOLF: Sure.

RULING

THE COURT: Well, the argument has been very forcefully made on both sides, both by the written material and verbally

here in court. And apparently there is certainly considerable interest, judging from a few visitors to the courtroom. And I hope that the quality, the high quality of this argument certainly shows to those that are listening that [34] the legal profession certainly does take matters such as this very seriously and that this matter has been very fully briefed and fully argued.

I'm concerned about this case, because what we basically have is a decision of the Colorado Supreme Court. It was not appealed. There was no request for *cert.* by the plaintiffs. And basically what the plaintiffs have done is come into the Federal Court and asked the Federal Court to second guess the Colorado Supreme Court, and the same issues that were presented to the Colorado Supreme Court.

And it seems to me that indeed the way this normally is done — and I'm not going to say should have been done in this case because there may have been many reasons why it was not — is that if plaintiff did not — plaintiffs did not like the decision in **Rael vs. Taylor** — and let make sure we've got that on the record: 876 P.2d 1210, which is a 1994 Colorado case, the Supreme Court of Colorado — it should have been appealed.

The case now is before this court, and the motion to dismiss is on two major areas. One is **Younger** abstention and the other is pursuant to the Anti-Injunction Act, which its a federal act, saying that federal courts do not enjoin state coverts in the — and the circumstances are there in the exception, basically to protect its own judgment, the relitigation exception which has been discussed.

[35] And the **Parsons Steel** case examines the tension between the relitigation exception and the Full Faith and Credit

Act and provides what the Supreme Court of the United States says is a way of reading both of these consistently.

First of all, looking at **Younger**, it is pretty much admitted that there is an ongoing state court proceeding and that there is opportunity to raise the federal claims in the state court proceeding; and the issue is whether we've got an important state interest here that has to be decided and should therefore require this court to abstain in favor of letting the state decide some of these issues.

It appears to me that in these areas that have been pointed out, the access to courts for state citizens, the interpretation of the state Torrens Act as it goes to notification, who should be notified and how they should he notified in this type of action — these are indeed important state issues. But perhaps the — one of the most important state issues in this court's view is the — is the state citizen's access to state lands and the issues concerning access to land, and the state interest in access to the land is a great state issue, certainly isn't a federal issue, unless we've got federal parks involved.

But in all of these areas, the access to courts, the access to lands, the interpretation of Torrens as it goes to notification of parties, all of these, it seems to me, involve [36] strong state issues. And basically, I think this is what the Colorado Supreme Court said. And they did not take their ruling lightly. They gave the decision more than 20 pages of discussion, so it was something which has been very deeply considered by the Colorado Supreme Court.

Therefore, it would seem to me that on the basis of **Younger**, the **Younger** abstention doctrine does indeed apply; that not only

is there ongoing state proceedings — not only are there ongoing state proceedings with opportunity to raise these federal claims, because indeed they were raised in the Colorado Supreme Court, but there are important state interests, more than one, as pointed out.

However, in addition to the **Younger** case, I think that this case falls within the **Parsons Steel** doctrine. And the fact that where a state court makes a decision on *res judicata* as stated by **Parsons Steel** — and I want to given the cite on that, too: 414 U.S. 518. On page 524 of that decision, it says that once the state court has finally rejected a claim of *res judicata,* then the Full Faith and Credit Act becomes applicable and federal courts must turn to state law to determine the preclusive effect of the state court's decision.

In **Rael vs. Taylor**, we do have, as I've indicated, extensive consideration of whether the lower decision on *res judicata* should be upheld. And on page 1229 of the **Rael** decision, the Supreme Court of Colorado says the following: [37] First of all, it says that the judgment of the Court of appeals is affirmed insofar as it upheld the trial court's denial of attorney's fees. Then it goes on to say that it's reversed insofar as it held the petitioner's claims are barred by the doctrine of *res judicata;* so to that extent, the Colorado Supreme Court is making a ruling reversing a lower court holding that claims were barred by *res judicata* and then of course sending the case down to be determined concerning these reasonably ascertainable persons with identifiable interests.

The Court's view is that both under the **Parsons Steel** doctrine and under **Younger**, this court should not interfere with what has been ruled on by the Colorado Supreme Court; and

accordingly, the motion to dismiss the complaint will be granted at this time and the complaint will be dismissed so that the state proceeding can proceed.

The motion for preliminary injunction therefore is moot.

Is there anything else that either side would like to have put on the record?

MR. WOLF: Thank you, your Honor.

MR. GORDON: Thank you, your Honor.

THE COURT: Thank you. And I hope maybe there can be some efforts at this point among the attorneys to see if there can be there can be something that can be worked out between the parties. If not, then I have great confidence in the state [38] court system.

* * *

APPENDIX C — FINAL DECREE OF CONFIRMATION OF TITLE AND REGISTRATION FILED OCTOBER 5, 1965

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 6904

J.T. TAYLOR, JR.,

Plaintiff,

vs.

PABLITZ JAQUEZ, ET AL,

Defendants.

FINAL DECREE OF CONFIRMATION
OF TITLE AND REGISTRATION.

This matter coming on before the Court upon and for the entry of final decree, and the Court being fully advised in the premises, DOTH

ORDER, ADJUDGE AND DECREE as follows,

1. That the within action was brought under and pursuant to Chapter 116. Article 10, Colorado Revised Statutes, to have registered the title of plaintiff in and to certain lands situate in the County of Costilla, State of Colorado, embracing approximately 77,524 acres, commonly known as the "Mountain Tract," which said lands are with particularity described in Exhibit A attached hereto and made part hereof [omitted], and to further have declared any right, title, estate, lien or interest in and to said lands claimed by any person, known or unknown.

2. That the Court has jurisdiction of the parties and of the subject matter herein.

3. That the statutory requirements of service, publication and notice have been met and fulfilled.

4. That a guardian ad litem was duly appointed pursuant to Colorado Revised Statutes, 118-10-24.

5. That title to said lands has been examined into by W.W. Platt, Esq., appointed by the District Court, County of Costilla, State of Colorado as Examiner of Titles for Costilla County, and the said Examiner has duly made report to the Court thereon and has filed his certificate of opinion that said title is vested in plaintiff-applicant, J.T. Taylor, Jr.

6. That the plaintiff-applicant, J.T. Taylor, Jr., is an unmarried, single person, and is without legal disability.

7. That the judgments, orders, and decrees heretofore entered herein of dates June 26, 1964 and May 14, 1965, attached hereto and made part hereof as Exhibits "B" and "C", respectively, determining and resolving the issues between plaintiff and the individual defendants be, and the same are hereby made final.

8. That pursuant to contract and agreement of date July 31, 1965 by and between plaintiff and the defendants County of Costilla and the Board of County Commissioners, County of Costilla, which said contract and agreement is attached hereto and made part hereof as Exhibit "D" [omitted], and which contract and agreement is hereby approved by the Court, said defendants County of Costilla and the Board of County

Commissioners, County of Costilla, are not vested with any present right, title or interest in and to an easement and right of way known as Whiskey Creek Pass Road on, over and across the lands of plaintiff described in Exhibit "A" [omitted]; that the defendants County of Costilla and the Board of County Commissioners, County of Costilla, shall, in the event of the timely happening of the condition precedent described and set forth in said contract and agreement, then become vested with the easement and right of way known as Whiskey Creek Pass Road, as in said contract and agreement described.

9. That title in fee simple to the land described in Exhibit "A" attached hereto and made part hereof is vested in the plaintiff-applicant, J.T. Taylor, Jr., free and clear of any and all liens, encumbrances, interests, claims and estates of all persons, known or unknown, save and except only:

(A) Excepted herefrom are the following described five parcels of land situate, in whole or in part, within the outer boundaries of the lands described in Exhibit "A", and title to which five parcels is not in anywise decreed or affected hereby:

(1) The N½SE¼; N½NE¼SW¼; S½SE½NW¼, S½N½SE¼NW¼; S½SW¼NE¼; S½S½SE¼ NE¼, all in Sec. 22, Twp. 2 N., R. 71 W. 6th P.M., containing 160 acres, as described in that deed of date June 23, 1944 recorded in Book 148 at Page 334 of the records of Costilla County, Colorado;

(2) A tract of land beginning at the NE corner of Sec. 2, Twp. 2 N., R. 71 W. 6th P.M.; thence south along line between sections 1 and 2, 1920.0 ft.; thence north 85° 03' west along north side of public road

1324.4 ft.; thence north 78° 03' west 1345.7 ft.; thence north along center line of section 2, 2081.8 thence south 89°06' east, 2640.0 ft.; thence south along line between sections 35 and 36, 515 ft. to beginning, containing 139.24 acres, as described in that deed of date October 6, 1919 recorded in Book 112 at Page 207 of the records of Costilla County, Colorado;

(3) A tract of land beginning at the NE corner of Twp. 2 N., R. 71 W. 6th P.M., thence south 89°25' east along township line, 265 ft.; thence south 2490.0 ft.; thence north 86°39' west along north line public road, 1388.5 ft.; thence north 2370.1 ft.; thence north 87°53' east along township line, 1122 ft. to beginning, containing 77.49 acres, as described in that deed of date January 12, 1933, recorded in Book 143 at Page 188 of the Costilla County, Colorado records;

(4) A tract of land being in the NW¼, Sec. 6, Twp. 2 N., R. 70 W. 6th P.M., beginning at stone from which point the northwest corner of Twp. 2 N., R. 70 west bears north 89°25' west 265 ft.; thence south 89°25' cast along north line Twp. 2 N., R. 70 West, 1384.5 ft.; thence south 2556.9 ft.; thence north 86°39' west, 1386.8 ft.; thence north 2490 ft. to beginning, as described in that deed of date October 6, 1919, recorded in Book 112 at Page 212 of the records of Costilla County, Colorado;

(5) All that portion of the NE¼ lying south of straight line drawn from the NW corner to the SE corner

of NE¼ and the NE¼NW¼ and all that portion of SE¼ lying North of a straight line drawn from the NW corner to SE corner of said SE¼ and the N½SE¼NW¼, all in Sec. 34, Twp. 2 N., R. 71 W. 6th P.M., containing 220 acres, as described in the application for registration;

(B) Deed of Trust of date February 15, 1960 recorded in Book 174 at Pages 93-116 of the records of the County of Costilla, State of Colorado, executed by J T. Taylor, Jr. to secure payment to the Costilla Land Company of the sum of $350,000.00, and assigned by the said Costilla Land Company to the First National Bank of Denver, Colorado by Assignment, dated August 23, 1960, recorded in Book 175 at Page 110 of said records.

(C) A strip of land twenty feet (20') wide and six hundred feet (600') long off the west side of the SW¼SW¼NE¼, Section 1, Township 2 North, Range 71 West Sixth P.M., and a strip of land sixty feet (60') wide and four hundred feet (400') long along the south side of the SW¼SW¼NW¼, Section 1, Township 2 North, Range 71 West Sixth P.M., all owned by the County of Costilla, State of Colorado.

(D) Any rights or encumbrances specifically excepted by statute, Colorado Revised Statutes 1963, 118-10-33.

10. That this decree shall be and take effect as of twelve o'clock noon, June 24, 1965.

Done and signed in Open Court this 5th day of October 1965.

Appendix C

BY THE COURT:

s/ HATFIELD CHILSON
JUDGE.

APPROVED AS TO FORM:

/s/ V.G. Seavy, Jr.
V.G. Seavy, Jr.
Attorney for Plaintiff

EUGENE H. TEPLEY
Attorney for Individual Defendants

/s/ Donald G. Smith
DONALD G. SMITH
Attorney for Costilla County and
Board of Commissioners

/s/ Henry Blickhahn
HENRY BLICKHAHN
Appointed Guardian Ad Litem and
Appointed Attorney under the
Soldiers and Sailors Civil Relief Act
of 1940 as Amended

Appendix C

EXHIBIT B

FILED JUNE 26 1964

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 6904

J.T. TAYLOR, JR.,

Plaintiff,

vs.

PABLITA JAQUEZ, ET AL.,

Defendants.

ORDER GRANTING AND DENYING
MOTION FOR SUMMARY JUDGMENT

This is a proceeding to register under the Torrens Act (Chapter 118, Article 10, C.R.S. 1953) the title to approximately 77,500 acres of grazing and timber lands lying in the foothills and mountains of Costilla County, Colorado. The proceeding is in the nature of an action to quiet title.

On July 31, 1962, default judgment was entered in favor of the plaintiff and against 369 of the defendants.

The plaintiff has moved for a summary judgment against the remaining defendants with the exception of the defendants

Appendix C

Board of County Commissioners of Costilla County and Costilla County.

For the purposes of this order and judgment, the term "defendants" refers to all defendants except those as to whom judgment has already been entered and except the Board of County Commissioners of Costilla County and Costilla County, Colorado.

The land here involved is a small part (approximately one-twelfth) of a one million acre Mexican land grant known as the Sangre de Cristo Grant.

The defendants claim to be inhabitants of an acre lying westerly of the lands here involved, and which area was also a part of the Sangre de Cristo Grant.

The defendants do not deny plaintiff's title to the property here involved, but allege that they have the right to pasture livestock upon the lands in question, to cut and take from the lands in question timber and fire wood, and the right to use the lands in question for recreational purposes.

These claims are based, generally speaking, on two grounds:

First, that these rights are vested in common in all inhabitants of the areas in which the defendants live, and as inhabitants of these areas they are entitled to these rights.

Secondly, each of the defendants asserts that he individually has acquired the rights of pasturage, wood, timber and recreation by prescriptive use.

Appendix C

As to the latter claims (individual rights acquired by prescriptive use) the Court cannot say at this stage of the proceedings that there is no genuine issue as to any material fact.

IT IS THEREFORE ORDERED that the motion for summary judgment as to the claims of the defendants for individual rights allegedly acquired by prescriptive use be and the same is hereby denied.

The first class of claims, wherein defendants assert the rights of pasturage, wood, timber and recreation are vested in common in all inhabitants of the area, are alleged to have their source in one or more of the following:

(1) A grant or dedication by Mexican law;

(2) A grant or dedication by Carlos Beaubien or William Gilpin, or both;

(3) Prescriptive use by the inhabitants generally.

The Court finds that the pleadings, depositions, answers to interrogatories, affidavits, documents, and statements of defendants' counsel as to facts which would be proven at trial all show that there is no genuine issue as to any material fact necessary to be determined in order for the Court, as a matter of law, to determine the first class of claims of the defendants.

RIGHTS BY VIRTUE OF MEXICAN LAW

On January 12, 1844, the lands here in question and the surrounding area were a part of Mexico. On that date the

Appendix C

Mexican government granted to Luis Lee and Narciso Beaubien approximately one million acres of land commonly referred to as the Sangre de Cristo Grant. (Plaintiff's Exhibit 1). This grant included the lands of the plaintiff and the area in which the defendants reside.

In 1847, Narciso Beaubion and Luis Lee were killed at the massacre of Taos. Narciso's father, Charles Beaubien, also known as Carlos Beaubien, inherited Narciso's undivided one-half interest in the grant, and thereafter he purchased the remaining undivided half from the estate of Luis Lee. (Plaintiff's Exhibit 5).

In 1848, the Treaty of Guadalupe Hidalgo was entered into between Mexico and the United States, by which certain areas were ceded by Mexico to the United States, including the Sangre de Cristo Grant. By the terms of the treaty, "property of every kind, now belonging to Mexicans not established there, shall be inviolably respected." (Plaintiff's Exhibit 4).

By Congressional act of July 22, 1854, 10 Stat. 308, the office of Surveyor General of New Mexico, Kansas and Nebraska was established for, among other things, to determine the claims to lands ceded to the United States by the treaty and to determine the validity or invalidity of these claims, and report his determination to Congress for such action as Congress might deem just and proper, with the view to confirm bona fide grants and give full effect to the treaty. The Surveyor General, after hearing, recommended the Sangre de Cristo Grant be confirmed in Charles Beaubien.

By Congressional act of June 21, 1860, 12 Stat. 71, the claim of Charles Beaubien to the Sangre de Cristo Grant was

confirmed, and on December 20, 1880, a patent from the United States to Charles Beaubien for the Sangre de Cristo Grant was issued by the United States. (Plaintiff's Exhibit 5).

The defendants contend, and for the purposes of this motion only, it is admitted that the settlers of the grant under Mexican law had certain rights in common to pasturage, wood and timber.

The question is whether or not these rights under Mexican law survived after the acquisition of the lands by the United States and the issuance of a patent by the United States to Beaubien.

The Court answers this question in the negative and concludes as a matter of law that the defendants have no rights in the plaintiff's lands by virtue of the laws of Mexico.

Authorities from which the Court arrived at this conclusion are: *Tameling v. United States Freehold & Emigration Co.*, 93 U.S. 644 (1876); *Barker v. Harvey*, 181 U.S. 481 (1901); *Maxwell Land-Grant Case*, 121 U.S. 325 (1887); *Martinez v. Rivera*, 196 F.2d 192 (Tenth Cir., 1952); *Flores v. Bruesselbach*, 149 F.2d 616 (Tenth Cir., 1945); *Payne Land & Livestock Co. v. Archuleta*, 180 F. Supp. 651 (D.C. N.M. 1960); *H.N.D. Land Co. v. Suazo*, 44 N.M. 547, 105 P.2d 744 (1940).

RIGHTS BY GRANT OR DEDICATION BY CARLOS BEAUBIEN OR WILLIAM GILPIN, OR BOTH

By 1852, some five years after Beaubien had acquired the grant lands, some settlers had settled upon the grant. In 1852 Beaubien gave to at least some of these settlers, individually,

certain parcels of land. Between 1852 and 1863, he sold and conveyed and contracted to sell numerous parcels of land to settlers upon the grant. (See Defendants' Exhibits 6, 6-A and 13). (The defendants do not claim their rights by virtue of any of these conveyances).

On May 11, 1863, Beaubien executed a certain writing which is recorded in Book 1 at page 256 of the records of Costilla County (Plaintiff's Exhibit 2), and which agreement was re-recorded, together with affidavits attached, on May 12, 1916 in Book 98, page 577. (See Defendants' Exhibit X).

At some time prior to April 7, 1864, Beaubien died and his heirs conveyed the Sangre de Cristo Grant to William Gilpin. On the same date Gilpin and the executors of the estate of Beaubien entered into an agreement. (Plaintiff's Exhibit 3).

The defendants contend that the document executed by Beaubien on May 11, 1863 (Plaintiff's Exhibit 2) and the agreement between Gilpin and the executors of the estate of Beaubien (Plaintiff's Exhibit 3) constitute a grant or dedication by Beaubien, confirmed by Gilpin, of the rights of pasturage, wood, timber and recreation in the lands of the grant, including all of the lands here involved.

Plaintiff's Exhibit 2 is written in spanish. Although the parties differ as to the exact translation, the differences in translation are not vital to our considerations.

The document makes no reference to recreation. As to pasture, wood and timber, the document provides that the lands of the Rito Seco shall remain uncultivated for the benefit of the inhabitants of San Luis, San Pablo and Los Ballejos for ingress

and pasturage. The document also provides, among other things, that the inhabitants shall have the right to enjoy the benefits of grazing land, wood and timber.

Insofar as the document may be construed to confer the rights of pasturage, wood and timber in the lands of the Rito Seco, it is without effect in this action, for the lands of the Rito Seco lie north of and outside of the lands here involved. (See map, Plaintiff's Exhibit 7). The document also refers to the "vega". Insofar as the document pertains to the land of the "vega", it is immaterial in this case for it is admitted that the "vega" refers to a meadow which is not within the boundaries of the lands here involved.

The document cannot be construed as a grant or dedication of rights in common to the settlers upon the grant to pasturage, wood and timber upon the entire one million acres of the grant. This would be entirely inconsistent with the obvious intent of Beaubien and the settlers. Between 1852 and 1863, Beaubien had recognized the rights of settlers to obtain private ownership of individual tracts of land. After the execution of Exhibit 2, he continued such recognition by numerous conveyances of lands to individual settlers. It is inconceivable that Beaubien or the settlers who purchased lands from Beaubien contemplated that their lands were subject to the rights of pasturage, wood and timber by any and all inhabitants of the area. If such were the case, one would wonder what the settlers got for the money or other consideration paid to Beaubien for their deeds.

Defendants, at page 5 of their brief in opposition to the motion for summary judgment, would construe Plaintiff's Exhibit 2 as a grant or conveyance to all the settlers on the grant, in common, of rights for pasturage, wood, timber and recreation, limited, however, solely to the lands of the plaintiff. This

construction has no support in the document or in the admitted acts and conduct of Beaubien and the settlers at the time of or prior to the execution of Plaintiffs Exhibit 2. If Exhibit 2 is a grant or dedication of these rights to the settlers in common, it applies to all of the lands of the grant or only the lands of the Rito Seco and the "vega". There is no basis upon which this Court could construe that the document construed as a grant or dedication is limited only to the plaintiff's lands.

The Court's view is that Plaintiff's Exhibit 2 is not a grant or dedication of rights to pasture, wood and timber. No words of conveyance, grant or dedication are contained in the instrument except insofar as the instrument applies to the "vega". The document clearly shows the expectation by Beaubien of future settlers upon the grant and an intent to continue to sell land to them. A grant or dedication to all settlers in common to pasturage, wood and timber without limitation as to the lands so dedicated is not only entirely inconsistent with the acts of both Beaubien and the settlers, but is inconsistent with the document itself.

The Court concludes that Plaintiff's Exhibit 2 is not and was not intended to be a grant or dedication (except as it pertains to the "vega") but was intended only as a set of regulations adopted by Beaubien.

Such was the construction given this document by the District Court of Costilla County, Colorado, in Civil Action No. 557. (See Findings and Decree marked by the Court as Plaintiff's Exhibit 16).

Plaintiff's Exhibit 3, the agreement between Gilpin and the executors of the estate of Beaubien, is an agreement by Gilpin to carry out certain commitments which Beaubien had made to

certain settlers during his lifetime, whereby Gilpin agreed to convey title to settlers "on compliance on their part with the terms by them entered into of which parties so entitled a list marked .A. accompanying this agreement ——". Exhibit A is in evidence as Defendants' Exhibit 4. Exhibit A is a list of persons "indebted to the late Chas. Beaubien" listing certain persons by name and with a dollar amount opposite their names, indicating that the persons named were entitled to conveyances upon payment of the sums set opposite their names.

Gilpin, in recognition of the obligation under the agreement, on November 10, 1865, wrote to one Don Faustin Medina as follows:

"Costilla, November 10th 1865

"To Don Faustin Medina

"Dear Sir:

"You are authorized by me to assure all persons residing in good faith within the limitation of the Sangre de Christo Grant, who hold their possession from Carlos Beaubien and myself, that they shall receive from me full and just confirmation and possession by deed so soon as the essential surveys to arrange their several boundaries shall be completed. This includes those, who assisted in the early settlement in the protection of the settlers against the Indians up to the time of the deed from Carlos Beaubien to me.

Respectfully,

William Gilpin"

This document has been marked as Plaintiff's Exhibit 20.

Appendix C

There is nothing in Plaintiff's Exhibits 3 or 20, or in the admitted facts, which would justify a finding that Beaubien had granted or dedicated rights of pasturage, wood, timber or recreation in common to the settlers on the grant, or any group of them, in all or any part of the grant lands, or that Gilpin had agreed to confirm any such rights.

Clearly Exhibit 3 recognized that certain settlers were entitled to deeds to parcels of land upon payment of a designated sum. By the agreement Gilpin acknowledged these rights, and by Exhibit 20 Gilpin expressed his intention of carrying out those obligations as soon as boundary surveys were completed.

The Court concludes that neither the acts and conduct of Beaubien and Gilpin nor the documents, Plaintiff's Exhibit 2 and Plaintiff's Exhibit 3, as supplemented by Defendants' Exhibit 4, constituted a grant or dedication to the inhabitants of the area in which the defendants reside of a right in common to pasture the lands of the plaintiff, to use the same for recreational purposes, or to take wood and timber therefrom.

RIGHTS ACQUIRED IN COMMON
BY PRESCRIPTIVE USE

At various times and over a considerable number of years after Gilpin's acquisition of the land, portions of the grant were sold and segregated from the property here involved by use and ownership.

Prior to 1900 a large part of the southerly portion of the grant of which the lands here in question were a part was sold for taxes. In 1900 a Treasurer's deed was issued to one Thomas Keely, and the plaintiff derives his title by means conveyances from Keely.

Appendix C

The Costilla Land Company and its predecessor in title, the Costilla Estates Development Company, had record title to premises of which the lands here in question were a part from 1908 until it was conveyed to the plaintiff by deed dated February 15, 1960. During that period the owners paid all taxes upon the premises and exercised rights of ownership by leasing the premises for grazing and timbering to others.

Most of the lands of the grant other than the lands here involved have been fenced. Some of the defendants are owners of portions of the land which were originally a part of the grant, and most of these parcels have been fenced. The plaintiff's lands have never been fenced with the exception of a fence and gate constructed across a road known as the Whiskey Creek Pass Road.

It may be inferred from the admitted facts in this case that from the time of earliest settlement, settlers on the grant were accustomed to and did use the unfenced and uncultivated portions of the grant for pasture, for wood and timber, and for recreation, and that such use included the lands now owned by the plaintiff. This use has continued to the present time as to plaintiff's lands.

The Court concludes that such usage in common by inhabitants of an area does not vest in the general public or in the inhabitants of an area in common the rights here claimed.

The authorities from which the Court arrived at this conclusion are: *Peersall v. Post,* 20 Wend. (N.Y.) 111 (1838); *Cobb v. Davenport,* 33 N.J.L. 223 (1868); *Merwin v. Wheeler,* 41 Conn. 14 (1874); *Smith v. Floyd,* 18 Barb. (N.Y.) 522 (1854); *Albright v. Cortright,* 64 N.J.L. 330, 45 Atl. 634 (1900); *Perley*

v. Langley, 7 N.H. 233 (1834); *Waters v. Lilley*, 4 Pick (Mass.) 145, 16 Am. Dec. 333 (1826); *Turner v. Hebron*, 61 Conn. 175, 22 Atl. 951, 14 L.R.A. 836 (1891); *Millspaugh v. Northern Indiana Public Service Co.*, 12 N.E.2d 396 (Ind. 1938); *McKenzie v. Elliott*, 134 Ill. 156, 24 N.E. 965 (1890); *Martinez v. Mundy*, 61 N.M. 87, 295 P.2d 209 (1956).

The Court further concludes that the defendants as inhabitants of the area in which they reside do not have the rights claimed by them in the lands of the plaintiff by virtue of the uses above set forth.

IT IS THEREFORE ADJUDGED that the defendants have no rights of any kind or nature in and to the lands here involved, by virtue of Mexican law or by virtue of a grant or dedication by Carlos Beaubien and William Gilpin or either of them; or by virtue of the uses of plaintiff's land by the inhabitants in common of the areas in which the defendants reside.

IT IS FURTHER ORDERED that inasmuch as judgment is not rendered upon the whole case or upon all of the claims of the defendants, this determination and judgment is not a final judgment and shall not be so entered by the Clerk of this Court.

DATED at Denver, Colorado, this 26th day of June, 1964.

BY THE COURT:

s/ HATFIELD CHILSON
Hatfield Chilson, Judge
United States District Court

Appendix C

EXHIBIT C

FILED MAY 14, 1965

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 6904

J.T. TAYLOR, JR.,

Plaintiff,

vs.

FABLITZ JAQUEZ, ET AL.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ON CLAIMS OF THE DEFENDANTS TO INDIVIDUAL RIGHTS BASED ON ADVERSE POSSESSION AND PRESCRIPTIVE USES

This is a proceeding to register under the Torrens Act (Chapter 118, Article 10, C.R.S. 1953) title to approximately 77,500 acres of grazing and timber lands lying in the foothills and mountains of Costilla County, Colorado. The proceeding is in the nature of an action to quiet title.

On July 31, 1963, default judgment was entered in favor of the plaintiff and against 369 of the defendants.

Appendix C

For the purposes of these findings of fact, conclusions of law and judgment, the term "defendants" refers to all defendants except the Board of County Commissioners of Costilla County and Costilla County, Colorado.

The land here involved is a small part (approximately one-twelfth) of a one million acre Mexican land grant known as the Sangre de Cristo Grant.

The defendants claim to be inhabitants of an area lying westerly of the lands here involved, and which area is also a part of the Sangre de Cristo Grant.

The defendants do not deny plaintiff's record title to the property here involved, but allege they have the right to pasture livestock upon the lands in question, to cut and take from the lands in question timber and fire wood, and the right to use the lands for recreational purposes.

These claims are based generally speaking on two grounds: first, that these rights are vested in common in all inhabitants of the areas in which the defendants live, and as inhabitants of these areas they are entitled to these rights; secondly, each of the defendants asserts that he individually has acquired the rights of pasturage, wood, timber, and recreation by adverse possession and prescriptive use.

On June 26, 1964, this Court sustained a motion of the plaintiff for summary judgment as to the claims of the defendants in the first category, and denied the plaintiff's motion for summary judgment against the defendants based on the claim of individually acquired rights by adverse possession and prescription. This Court stated:

Appendix C

> "As to the latter claims (individual rights required by prescriptive use) the Court cannot say at this stage of the proceedings that there is no genuine issue as to any material fact."

The Court has now heard the evidence in support of and in opposition to the defendants' claims of individual rights to pasturage, wood, timber, and recreation based on the defendants' alleged adverse possession and prescriptive use, and the Court does make the following findings of fact with relation to these claims.

FINDINGS OF FACT

1. All of the defendants claim some individual rights in the plaintiff's lands. Some claim a right of pastureage, some claim the right of recreation, some claim the right to take wood and timber, but most of the defendants claim rights to pasturage, wood and timber, and recreation. In these findings of fact the Court will not segregate the claims of the individual defendants, for the findings of fact and the conclusions of law are of such nature that a segregation of the respective claims of the defendants is not necessary.

2. A brief historical background of the Sangre de Cristo Grant and its settlement is helpful to an understanding of the issues.

On January 12, 1844, the lands here in question and the surrounding area were a part of Mexico. On that date the Mexican government granted the Luis Lee and Herciso Beaubien the Sangre de Cristo Grant, consisting of approximately one million acres of land. Included in the grant were the lands of

the plaintiff and the area to the west thereof in which the most of the defendants reside.

In 1847 Charles Beaubien inherited Narcizo's one-half interest and later purchased the other one-half from the estate of Luis Lee.

In 1848 Mexico and the United States entered into the Treaty of Guadalupe Hidalgo, as a result of which the Sangre de Cristo Grant was ceded by Mexico to the United States.

By congressional act of June 21, 1860, 12 Stat. 71, the ownership of the grant was confirmed in Charles Beaubien, and later a patent from the United States was issued to him.

Prior to his death in 1869, Beaubien had had some success in obtaining settlers upon the grant, for the evidence shows that between 1852 and 1863 Beaubien sold and conveyed and contracted to sell numerous parcels of land to various settlers.

In 1864 William Gilpin purchased the remainder of the grant from Beaubien's estate, and Gilpin and his successors in title over a number of years continued to sell and dispose of portions of the grant.

As these portions of the grant were sold by Beaubien and Gilpin and his successors in interest, the purchasers segregated their property from the balance of the grant by the construction of fences.

It can be inferred from the evidence that from the time of the earliest settlement of the grant the inhabitants of the area pastured livestock on the unfenced portions of the grant and

obtained wood and timber for their own use therefrom. As the lands which were sold to settlers and others were fenced, the lands available for pasturage, wood and timber were thereby reduced. The evidence discloses no attempt by the inhabitants of the area to enforce any claim for grazing or wood and timber rights upon the fenced lands of the grant.

The present and more recent inhabitants of the areas in which the defendants reside have continued the pasturage of unfenced lands and the taking of wood and timber therefrom in essentially the same manner as the early inhabitants of the area. The principal difference is that the unfenced area has continued to shrink over the years and the uses of the inhabitants which previously were spread over a large part of a million acres is now concentrated on some 77,500 acres.

Until approximately 20 years ago there were two sizable areas of the grant which remained unfenced; the Trinchera ranch in the norther part of the grant and the plaintiff's lands adjoining Trinchera on the south.

The inhabitatns of the are pastured livestock and obtained wood and timber from both the Trinchera ranch and the plaintiff's lands until the Trinchera ranch was fenced approximately 20 years ago. Thereafter the pasturage of livestock and the cutting of wood and timber by the inhabitants of the area was confined largely to the lands here involved, for after the fencing of the Trinchera ranch these lands remained the only unfenced portion of the grant of any significance.

3. The uses by the defendants were made under a claim of right. The evidence discloses that some of the defendants claimed the right because they had made the uses over a long period of

time and no one tried to stop them. Others made their claim on the basis that their parents had told them they had those rights by virtue of the Mexican grant, while others claimed the right because their parents had told them they had the right. All the defendants recognized that every resident and inhabitant of the areas in which the defendants reside had the same rights.

4. Many of the defendants limited their claims for pasturage to the maximum number of livestock that they had over pastured or owned at one time. Most of the defendants, however, claim the right to pasture "as many cattle so he might ever own" upon any part or all of the plaintiff's land.

5. With certain exceptions which it is not necessary to detail in these findings, the uses of the defendants have continued for more than 20 years prior to the acquisition of the property by the plaintiff and more than prior to the institution of this action. The uses of the defendants during this 20 year period was open and notorious.

6. The uses by each defendant were in no way exclusive. Each defendant's uses of the plaintiff's lands, both for pasturage, wood and timber, and recreation, were made in common with similar uses by many other inhabitants of the area. Each of the defendants recognized the right of the other inhabitants of the area to make the same uses of the plaintiff's land or portions thereof as each defendant claims. Thus the evidence discloses that in the same area on the plaintiff's land the cattle of many different defendants and their neighbors grazed the same area at the same time. The defendants obtained wood and timber from the same areas as other defendants and inhabitants of the area.

At the same time that the defendants were pasturing the

lands and obtaining wood therefrom, the lessees of the owners of the land were grazing livestock upon the same property and cutting timber therefrom.

The evidence clearly discloses that each defendant's use was in common with similar uses of other defendants and other persons not defendants and in common with similar uses by lessees of the owners of the land here involved.

7. The only uses which have been made of the land here involved are grazing, the cutting of wood and timber, and recreation, and the evidence does not disclose that the land has value for any other use or purpose.

8. Plaintiff's title to the land here involved is derived through a tax deed issued in 1900 to one Thomas Kealy, who in 1908 conveyed the lands to the Costilla Estates Development Company, and which company later conveyed the lands to the Costilla Land Company. This latter company in February of 1960 conveyed the lands to the plaintiff.

From 1908 to 1960, plaintiff's predecessors in title paid all taxes assessed upon the premises here involved, and no defendant has paid any portion of said taxes. No taxes have been assessed or paid upon any defendant's claimed interest in these lands.

CONCLUSIONS OF LAW

The Court concludes that the defendants nor any of them nor any persons claiming by, through or under them have any right, title, claim, or interest in or to the lands described in the application or the title opinion of the title examiner, nor any

part or parcel thereof, by virtue of adverse possession, prescription, or otherwise.

IT IS THEREFORE ADJUDGED that the defendants and each of them and any persons claiming by, through or under them or any of them have no right, title, claim, or interest of any kind or nature in and to the lands described in the application and the opinion of the title examiner, and that the plaintiff is entitled to a decree quieting his title as against the defendants and each of them and all other persons or parties unknown claiming any right, title, estate, lien, or interest in or upon the real estate described in the application, or such portion of said real estate as may eventually be determined by this Court as proper for registration as provided by Chapter 113, Article 10, C.R.S. 1953.

IT IS FURTHER ADJUDGED that these findings of fact, conclusions of law and judgment shall not be binding upon or determinative of the claims made in this action by the defendants the Board of County Commissioners of Costilla County and Costilla County, Colorado.

IT IS FURTHER ORDERED that inasmuch as judgment is not rendered upon the whole case or upon all of the claims of all of the defendants, this determination and judgment is not a final judgment and shall not be so entered by the Clerk of this Court.

DATED at Denver, Colorado, this 14th day of May, 1965.

BY THE COURT:

s/ HATFIELD CHILSON
Hatfield Chilson, Judge
United States District Court